

IN THE SUPREME COURT OF MISSOURI

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PETITION IN MANDAMUS

No. SC86645

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STATE ex rel. ELDON BUGG,

Relator,

v.

THE HONORABLE ELLEN S. ROPER,

Respondent.

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On Petition from the Circuit Court of Boone County, Missouri,  
Thirteenth Judicial Circuit  
The Honorable Ellen S. Roper, Judge

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BRIEF FOR RESPONDENT

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## TABLE OF CONTENTS

Table of Contents .....	p. 1
Table of Authorities.....	p. 2
Statement of Facts .....	p. 3
Point Relied On .....	p. 5
Argument.....	p. 6
Standard of Review .....	p. 6
Venue In This Action Is Proper Only In The Circuit Court Of Jackson County, Missouri. Therefore, The Court Should Order That Respondent Transfer This Action To The Circuit Court Of Jackson County, Missouri .....	p. 6
Conclusion .....	p. 10
Certificate of Service .....	p. 11

## **TABLE OF AUTHORITIES**

AMERICAN HERITAGE DICTIONARY 209 (2d Collegiate ed. 1991) .....	p. 9
<i>Murphy v. Carron</i> , 536 S.W.2d 30 (Mo. banc 1976)) .....	p. 6
<i>State ex rel. Casey's General Stores, Inc. v. City Council of Salem</i> , 699 S.W.2d 775 (Mo.App. 1985) .....	p. 6
<i>State ex rel. DePaul Health Ctr v. Mummert</i> , 870 S.W.2d 820 (Mo. banc 1994) .....	p. 9
<i>State ex rel. Drake Publishers, Inc. v. Baker</i> , 859 S.W.2d 201 (Mo.App. 1993) .....	p. 8
<i>State ex rel. Kessler v. Shay</i> , 820 S.W.2d 311 (Mo.App. 1991) .....	p. 6
<i>State ex rel. Linthicum v. Calvin</i> , 57 S.W.3d 855 (Mo. banc 2001) .....	p. 7, 8
<i>State ex rel. Private Nursing Service, Inc. v. Romines</i> , 130 S.W.3d 28 (Mo.App. 2004) .....	p. 8
<i>State ex rel. Rothermich v. Gallagher</i> , 816 S.W.2d 194 (Mo. banc 1991) .....	p. 7
<i>Sullenger v. Cooke Sales &amp; Service Co.</i> , 646 S.W.2d 85 (Mo. banc 1983) .....	p. 7
<i>Wolff Shoe Co. v. Dir. Of Revenue</i> , 762 S.W.2d 29 (Mo. banc 1988) .....	p. 8
<i>Wood v. Wood</i> , 716 S.W.2d 491 (Mo.App. 1986) .....	p. 7
<b>Statutes and Rules</b>	
Section 508.010, RSMo. (2000) .....	p. 8

## **STATEMENT OF FACTS**

Relator filed his Petition for Damages against Defendants in the 13<sup>th</sup> Judicial Circuit Court of Boone County, Missouri on April 17, 2001. (Relator's Appendix, A3-A8) In his Petition, Relator alleged causes of action enumerated in several counts, including breach of a sales agreement involving a motor vehicle, negligent misrepresentation of the condition of a motor vehicle, and fraudulent misrepresentation of the condition of a motor vehicle. (Id. at A3-A9)

Defendants were and are residents of Independence, Jackson County, Missouri. (Id. at A3, A9, A11, A20) Additionally, Defendants were served with the Summons and Petition in the present case at their home located in Independence, Jackson County, Missouri. (Id.)

By Relator's own admission, all of the above-referenced allegations of wrongdoing against Defendants arise out of transactions and/or events that occurred in Independence, Jackson County, Missouri. (Id. at A12-A13)

Thomas C. Locke, former co-counsel for Defendants, filed a pre-answer motion to dismiss, pursuant to Mo.R.Civ.P. 55.27 on July 5, 2001, that challenged the issue of venue in Boone County, Missouri. (Id. at A9-A11) Thereafter, Relator filed his First Amended Petition. (Id. at A11-A17)

The basis for Defendants' Motion to Dismiss was that the relevant provisions of Missouri's general venue statute, RSMo. § 508.010(5) and (6),

expressly state that the present action may be brought a) in the county in which Defendants reside, b) in the county suing and where one of the Defendants may be found, or c) in the county where the cause of action accrued regardless of the residence of the parties. (Id. at A9-A11)

The Honorable Ellen S. Roper entered her Order granting Defendants' Motion to Dismiss on August 17, 2001. (Id. at A22)

**POINT RELIED ON**  
**(RESPONSE TO RELATOR'S POINTS RELIED ON I, II, AND III)**

**I. VENUE IN THIS ACTION IS PROPER ONLY IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI. THEREFORE, THE COURT SHOULD ORDER THAT RESPONDENT TRANSFER THIS ACTION TO THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI.**

*Wood v. Wood*, 716 S.W.2d 491, 494 (Mo.App. 1986).

*Sullenger v. Cooke Sales & Service Co.*, 646 S.W.2d 85,88 (Mo. banc 1983).

Section 508.010, RSMo. (2000).

*State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855, 857 (Mo. banc 2001).

*State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. banc 1991).

*Wolff Shoe Co. v. Dir. Of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988).

*State ex rel. Private Nursing Service, Inc. v. Romines*, 130 S.W.3d 28, 29 (Mo.App. 2004).

*State ex rel. Drake Publishers, Inc. v. Baker*, 859 S.W.2d 201, 204 (Mo.App. 1993).

AMERICAN HERITAGE DICTIONARY 209 (2d Collegiate ed. 1991).

*State ex rel. DePaul Health Ctr v. Mummert*, 870 S.W.2d 820 (Mo. banc 1994).

## **ARGUMENT**

### **STANDARD OF REVIEW**

On appeal, mandamus is reviewed as other non-jury civil matters. *State ex rel. Casey's General Stores, Inc. v. City Council of Salem*, 699 S.W.2d 775, 776 (Mo.App. 1985). “Therefore, we sustain the judgment of the trial court in a mandamus action unless no substantial evidence exists to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *State ex rel. Kessler v. Shay*, 820 S.W.2d 311, 314 (Mo.App. 1991) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)).

**VENUE IN THIS ACTION IS PROPER ONLY IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI. THEREFORE, THE COURT SHOULD ORDER THAT RESPONDENT TRANSFER THIS ACTION TO THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI.**

Relator filed his Petition for Damages against Defendants in the 13<sup>th</sup> Judicial Circuit Court of Boone County, Missouri on April 17, 2001. (Relator's Appendix, A3-A8) In his Petition, Relator alleges causes of action enumerated in several counts, including breach of a sales agreement involving a motor vehicle, negligent misrepresentation of the condition of a motor vehicle, and fraudulent misrepresentation of the condition of a motor vehicle. (Id.)

Defendants were and are residents of Independence, Jackson County, Missouri. (Id. at A3, A9, A11, A20) Additionally, Defendants were served with

the Summons and Petition in the present case at their home located in Independence, Jackson County, Missouri. (Id.)

Venue is not waived when a defendant makes a motion on the issue. *Wood v. Wood*, 716 S.W.2d 491, 494 (Mo.App. 1986)(citing *Sullenger v. Cooke Sales & Service Co.*, 646 S.W.2d 85,88 (Mo. banc 1983)).

Thomas C. Locke, former co-counsel for Defendants, filed a pre-answer motion to dismiss pursuant to Mo.R.Civ.P. 55.27 on July 5, 2001 that challenged the issue of venue in Boone County, Missouri. (Id. at A9-A11) Thereafter, Relator filed his First Amended Petition. (Id. at A11-A17)

The basis for Defendants' Motion to Dismiss is that the relevant provisions of Missouri's general venue statute, RSMo. § 508.010(5) and (6), expressly state that the present action may be brought a) in the county in which Defendants reside, b) in the county suing and where one of the Defendants may be found, or c) in the county where the cause of action accrued regardless of the residence of the parties. (Id. at A9-A11)

"Venue in Missouri is determined solely by statute." *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855, 857 (Mo. banc 2001) (quoting *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. banc 1991)). "The purpose of the venue statutes is to provide a convenient, logical, and orderly forum for litigation." *Id.*



In relevant part, RSMo. § 508.010 provides as follows:

Suits instituted by summons shall, except as otherwise provided by law, be **brought**:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

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(6) In all tort actions the suit may be brought in the county where the cause of action accrued regardless of the residence of the parties, ....

“The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning.” *Linthicum*, 57 S.W.3d at 857-58 (quoting *Wolff Shoe Co. v. Dir. Of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988)).

Relator’s allegations of wrongdoing sound in tort. In this regard, RSMo. § 508.010(6) provides that the suit may be brought in the county where the cause of action accrued regardless of the residence of the parties. For venue purposes, a cause of action “accrues” at the place where the wrongful conduct causing injury or damages occurred. *State ex rel. Private Nursing Service, Inc. v. Romines*, 130

S.W.3d 28, 29 (Mo.App. 2004)(citing *State ex rel. Drake Publishers, Inc. v. Baker*, 859 S.W.2d 201, 204 (Mo.App. 1993)).

By Relator's own admission, all of the above-referenced allegations of wrongdoing against Defendants arise out of transactions and/or events that occurred in Independence, Jackson County, Missouri. (*Id.* at A12-A13)

With regard to the remaining provisions of RSMo. § 508.010, it is noteworthy that the term "brought" in the legal context means "to advance or set forth in a court." *Id.* at 858 (citing AMERICAN HERITAGE DICTIONARY 209 (2d Collegiate ed. 1991)). In Missouri, venue is determined as the case stands when it is "brought." *Id.* (citing *State ex rel. DePaul Health Ctr v. Mummert*, 870 S.W.2d 820, 823 (Mo. banc 1994)).

Generally, a suit is "brought" against an original defendant or original defendants when the petition is initially filed. *Id.* For purposes of RSMo. § 508.010, a suit instituted by summons is considered to be "brought" whenever a plaintiff "brings" a defendant or defendants into a lawsuit. This rule is true whether the defendant or defendants are "brought" into the action by an original petition or by an amended petition. *Id.*

As noted, Relator filed his original Petition for Damages against Defendants in the 13<sup>th</sup> Judicial Circuit Court of Boone County, Missouri. Therefore,

Defendants were “brought” into this action with Relator’s original Petition for Damages.

As seen above, a) Defendants are residents of Jackson County, Missouri, b) Defendants were served with the Summons and Petition in this case in Jackson County, Missouri, and c) Relator’s allegations of wrongdoing against Defendants arise out of transactions and/or events that occurred in Jackson County, Missouri. Therefore, RSMo. § 508.010 unequivocally confers venue for the present action only in Jackson County, Missouri.

Because RSMo. § 508.010 unequivocally confers venue for the present action only in Jackson County, Missouri, this action should be transferred to the Circuit Court of Jackson County, Missouri.

### **CONCLUSION**

As seen in the paragraphs above, venue in the Circuit Court of Boone County, Missouri is clearly improper pursuant to RSMo. § 508.010. Therefore, this action should be transferred to the Circuit Court of Jackson County, Missouri.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE AND SERVICE**

I hereby certify;

1. That the attached brief complies with the limitations contained in the Supreme Court Rule 84.06 and contains 1898 words, excluding the cover, and this certification, as determined by Microsoft Word;
2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and
3. That a true and correct copy of the attached brief and a disk containing the same were mailed, postage prepaid, this 8<sup>th</sup> day of September, 2005, to:

Eldon Bugg  
88 Pawnee Lane  
Boonville, MO 65233

The Honorable Ellen S. Roper  
705 E. Walnut  
Columbia, MO 65201

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